

Recording Requested By  
First American Title Company

DOC # 2006-0205124  
03/23/2006 08:00A Fee: 73.00  
Page 1 of 23  
Recorded in Official Records  
County of Riverside  
Larry W. Ward  
Assessor, County Clerk & Recorder



RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:

FREEMAN, FREEMAN & SMILEY, LLP  
2 Park Plaza, Suite 1245  
Irvine, CA 92614  
Attn: Jill M. Draffin

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**COVENANT AND AGREEMENT**

THIS COVENANT AND AGREEMENT ("Agreement") is dated as of the 23 day of March, 2006 by GARDEN OF CHAMPIONS LLC, a California limited liability company ("GOC"), in favor of the CITY OF INDIAN WELLS, a charter city duly organized under the Constitution and the laws of the State of California ("City").

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**RECITALS**

A. GOC is the fee owner of that certain real property commonly known as Indian Wells Tennis Garden and appurtenant facilities, located within the city limits of City and more fully described on Exhibit A attached and incorporated by this reference (the "GOC Property"). By Grant Deed recorded prior to recordation of this Agreement, GOC has transferred certain real property more particularly described on Exhibit B attached and incorporated by this reference (the "Parking Area") to City. The Parking Area is used as a parking facility for the GOC Property, among other uses.

B. Previously, GOC had caused to be installed a tunnel below Miles Avenue for purposes of connecting the Parking Area and the GOC Property (the "Tunnel"). GOC has agreed with City that upon GOC's receipt of written request from the City, GOC will permanently close the access from the Parking Area to the GOC Property by closing off the southern end of the Tunnel.

C. Previously, GOC had caused to be installed on the Parking Area (which GOC previously owned) a water well ("Well") for the benefit of the GOC Property and other property owned by GOC. GOC has agreed with City that upon GOC's receipt of written request from the City, GOC will cap the Well.

D. The parties desire to agree to the provisions set forth herein regarding the Tunnel and the Well.

NOW, THEREFORE, City and GOC hereby covenant and agree as follows:

**AGREEMENT**

1. **Covenant to Close Tunnel Access.** GOC covenants that within one hundred eighty (180) days after written notice from City or its successor and assign, GOC will cause the southern entrance to the Tunnel to be permanently closed, using such commercially reasonable methods, means and materials as GOC determines (the "Tunnel Work"). The Work shall be completed at GOC's sole cost and expense, in compliance with all applicable laws, in accordance

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with usual and customary safety measures and in a manner that will permanently seal the southern entrance that will allow the City or its successor and assign (at its or their sole cost and expense) to fill and compact the area adjacent to the southern entrance. If the Tunnel Work is performed, then concurrently with the completion of the Tunnel Work, GOC shall install a gate at the entrance to the Tunnel from the GOC Property if one does not then exist. In addition, if the Tunnel Work is performed and GOC elects to use any portion of the Tunnel for storage or related purposes, then GOC shall be obligated to obtain any and all permits for such use that may be required pursuant to applicable City requirements. This covenant is for the benefit, of and is enforceable by, City or its successor and assign.

2. Covenant to Remove Well. GOC covenants that within thirty (30) days after written notice from City or its successor and assign, GOC shall cease all use of the Well and shall no longer be entitled to draw or otherwise use or acquire water from the Well. GOC further covenants that within one hundred eighty (180) days after written notice from City or its successor and assign, GOC will cause the Well to be capped, using such commercially reasonable methods, means and materials as GOC determines (the "Well Work" together with the Tunnel Work, collectively, the "Work"). The Well Work shall include the obligation to complete and obtain, at GOC's sole cost and expense, all required permits and related government clearances with respect to the capping of the Well. The Well Work shall be completed at GOC's sole cost and expense, and in compliance with all applicable laws and usual and customary safety measures. This covenant is for the benefit, of and is enforceable by, City or its successor and assign.

3. Agreement to Cooperate; License; Indemnification. City hereby grants GOC, its agents, employees, contractors and representatives a temporary license to enter the Parking Area at any time prior to completion of the Work for purposes of carrying out investigations, studies, preliminary work, construction work and related inspections and shall cooperate to provide reasonable access to the portions of the Parking Area reasonably required by GOC to carry out the Work. The parties will cooperate to limit public access to the construction site during the period of construction of the Work. GOC shall immediately repair, at GOC's sole cost and expense, any damage to the Parking Area caused by or resulting from the entry of GOC or any of its agents, employees, contractors or representatives onto the Parking Area and/or carrying out the Work pursuant to this Agreement. GOC further agrees to defend, hold harmless and indemnify City from and against any and all losses, claims, demands, liabilities, fees, costs, expenses and damages arising out of the entry and/or carrying out the Work by GOC or any of its agents, employees, contractors, or representatives onto the Parking Area pursuant to this Agreement.

4. Binding Agreement. The GOC Property and the Parking Area and each portion thereof shall be owned, conveyed, mortgaged, encumbered, leased, developed, improved, used and occupied subject to this Agreement and the covenants set forth herein shall (i) run with and be binding on each portion of the GOC Property as a burdened servient tenement and each portion of the Parking Area as a benefited dominant tenement, and (ii) be enforceable as and constitute covenants running with the land in accordance with California Civil Code Sections 1462, 1465, 1466, 1467 and 1468. Promptly on GOC's request, following GOC's completion of the Work (or, if the City has not requested that GOC carry out the Tunnel Work and/or the Well Work within sixty (60) months after the date hereof, then following expiration of such sixty (60) month period) City will execute a written termination of this Agreement in form suitable for recording. This Agreement shall not terminate until the date on which the City or its successor or assign has

executed, acknowledged and recorded, in the Official Records of Riverside County, such written termination indicating that the Work has been completed or sixty (60) month period has elapsed without the City requesting the Tunnel Work and/or the Well Work, and this Agreement has therefore been terminated.

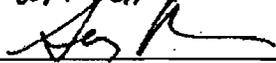
5. Amendment. This Agreement cannot be amended or terminated (except as described in Section 4 above) without the prior written approval of City.

IN WITNESS WHEREOF, the parties hereto have caused this Covenant and Agreement to be executed as of the date first written above.

**GARDEN OF CHAMPIONS LLC,**  
a California limited liability company

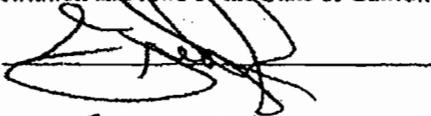
By: INDIAN WELLS TENNIS TOURNAMENT, LLC,  
a Nevada limited liability company,

Its MEMBER  
BY WMI FOA HOLDINGS, LLC, MEMBER

By: 

Its: MEMBER

**CITY OF INDIAN WELLS,**  
a charter city duly organized under the  
Constitution and laws of the State of California

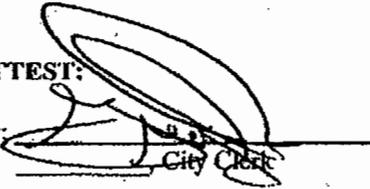
By:   
\_\_\_\_\_

Its: City Manager

**APPROVED AS TO FORM:**

By: Stephen P. Deitsch  
Stephen P. Deitsch, Esq., City Attorney

**ATTEST:**

By:   
\_\_\_\_\_ City Clerk

STATE OF California

COUNTY OF Riverside

On March 3, 2006 before me, S. Nuno, Notary Public in and for said County and State, personally appeared \*George Mackin and Greg R. Johnson\* \* \* ~~personally known to me~~ (or proved to me the basis of satisfactory evidence) to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he/she~~ they executed the same in ~~his/her~~ their authorized capacity(ies), and that by ~~his/her~~ their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature *S. Nuno*



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On March \_\_\_\_\_, 2006 before me, \_\_\_\_\_, Notary Public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me (or proved to me the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF GOC PROPERTY**

PARCEL 5 AS SHOWN BY PARCEL MAP NO. 28833 ON FILE IN BOOK 195 PAGE (S) 10 THROUGH 15 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM AN UNDIVIDED 15/16THS OF ALL OIL, GAS, MINERAL AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, AS RESERVED BY HOWARD CHARTER, IN DEED RECORDED JULY 23, 1956 IN BOOK 1947 PAGE 92 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM AN UNDIVIDED 1/16TH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS AS RESERVED BY THE STATE OF CALIFORNIA IN PATENT RECORDED MARCH 25, 1930, IN BOOK 9 PAGE 442 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS PROVIDED BY AN ACT OF THE LEGISLATURE, APPROVED MAY 25, 1921 (CHAPTER 303, STATUTES OF CALIFORNIA, 1921) AND RESERVED IN THAT CERTAIN PATENT RECORDED MAY 12, 1928 IN BOOK 9, PAGE(S) 310 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM ANY INTEREST IN THAT CERTAIN UNLOCATED 20.00 FOOT SQUARE WELL SITE REFERRED TO IN DEED FROM HARRY L. BOYNTON, ET UX, TO JOHN D. CARTER, DATED MARCH 20, 1930 IN BOOK 859 PAGE 118 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

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**EXHIBIT B**

**LEGAL DESCRIPTION OF PARKING AREA**

Parcel A in the City of Indian Wells, County of Riverside, State of California, as shown on Lot Line Adjustment 07-05-04 recorded March 10, 2006 as Instrument No. 2006-0174897, Records of Riverside County, California, a copy of which is attached as Exhibit C

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**EXHIBIT C**

**[Recorded Copy of Lot Line Adjustment]**

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